IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition No. 596 of 2006

1.Gangji Bhanji Bheda
and others ..Petitioners

vs.

1. Maniben Meghji Chheda
alias Shah and another ..Respondents

Shri Anil C.Singh i/b Shri D.R.Shah for petitioners
Shri P.M.Shah for respondent no.1.

CORAM: S.B.MHASE J.
21st March, 2006

P.C.

1. Heard both the learned Counsel.

2. Rule. Returnable forthwith.

3. The order dated 13th October, 2005 passed by the City Civil Court, Greater Mumbai in Chamber Summons No.958 of 2004 is challenged by the petitioners since the chamber summons issued by the petitioners is dismissed. By the said chamber summons the petitioners have prayed that the petitioners be joined as party defendants in L.C.suit no.2744 of 2004 pending before the City Civil Court. Admittedly the said suit has been filed by the respondents challenging the notice issued by the

Corporation on 5th June, 2004 seeking possession and eviction of the respondent/plaintiff from shop no.21 which is the suit premises in the said suit. The respondent claimed that he is the owner of the said shop. The Court has found that the petitioners are not necessary and formal parties and the rights of the applicants with regard to 18 shops are not going to be affected if they are not joined as party defendants and, therefore, rejected the application. Shri Sing, learned counsel appearing for the petitioners, invited attention of this Court to the affidavit filed by P.S.Kadam, Asstt.Engineer (Maintenance) E Ward in the employment of the Municipal Corporation, Greater Mumbai in the Notice of Motion No.77 of 2005 in Writ Petition No.2732 of 2003 pending before this Court on Original Side. It is stated in the affidavit that "I further state that out of 18 shops required tobe handed over to the occupants/petitioners, 14 shops are presently in possession of the Corporation and the Corporation has offered the said possession to these occupants/petitioners. I state that the possession of the remaining four shops is not with the Corporation. One shop out of four is

possessed by the owner himself, whereas the remaining three are encroached upon by the trespassers. The petitioners are reluctant on accepting the possession of 14 shops as all the 17 occupiers want the possession of the 17 shops together at a time.. Against the trespassers in three shops proceedings of eviction are initiated by these respondents under section 105B of the M.M.C.Act and the same is under challenge in suit nos.2710 of 2002, 2744 of 2004 and 2745 of 2004 before the City Civil Court. Hence the Corporation is unable to hand over possession of the said three shops." Thus the suit No.2744 of 2004 has been referred in the said affidavit which has been filed before this Court and on getting possession of those premises possession will be handed over to the petitioners in that petition namely the present petitioners. Thus, it is established that on getting possession by the Corporation the petitioners are entitled to get possession of the said premises from the Corporation and, therefore, they have interest in the pending lis and, therefore, they want themselves to be joined as parties. Under these circumstances, it is inappropriate on the part of the City Civil Court to observe that the petitioners

are neither necessary parties nor formal parties. The reasoning adopted is not proper and the City Civil Court should have allowed the Chamber Summons as prayed for by the petitioners. Interim order passed in Chamber Summons No.958 of 2004 is hereby quashed and set aside. Chamber Summons No.958 of 2004 is hereby allowed. The plaintiff/respondent no.1 is hereby directed to add the petitioners as party defendants in the said suit. Writ Petition is accordingly disposed of.

4. Observations made in this order are only for the purpose of finding out whether the provisions of Order 1 Rule 10 of the Code of Civil Procedure are complied or not. All points to be agitated by the parties are kept open to be agitated before the City Civil Court on appreciation of evidence being produced.

(S.B.MHASE J.)